UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

BIOMEDICAL APPLICATIONS OF PUERTO RICO, INC.
d/b/a FRESENIUS KIDNEY CARE NARANJITO

and Case 12–CA–281235

UNIDAD LABORAL DE ENFERMERAS (OS) Y
EMPLEADOS DE LA SALUD

Ayesha Villegas, Esq.,
for the General Counsel.
Miguel Rivera Arce and *Ismael Molina, Esqs.*,
for the Respondent.

DECISION

GEOFFREY CARTER, Administrative Law Judge. The General Counsel contends that in late July and early August 2021, Biomedical Applications of Puerto Rico, Inc. d/b/a Fresenius Kidney Care Naranjito (Respondent) violated the National Labor Relations Act (the Act) by disciplining four nurses because they engaged in union and protected concerted activities, and by refusing a nurse's request to have a union representative present at a meeting that she believed was investigatory and would result in disciplinary action. As explained below, I have determined that Respondent violated the Act, but only by unlawfully disciplining the nurses.

STATEMENT OF THE CASE

This case was tried by videoconference on February 22–24 and March 29, 2022.[1] The Unidad Laboral de Enfermeras(os) y Empleados de la Salud (Union) filed the charge on August 11, 2021, and filed a first amended charge on October 21, 2021.[2]

The General Counsel issued its complaint on November 18, 2021, alleging that Respondent violated Section 8(a)(3) and (1) of the Act by: (a) disciplining four employees on or about July 29 and/or August 2, 2021, because they engaged in union and/or protected concerted activities (complaining about the heat and malfunctioning air conditioning in their work area); and (b) on about August 2, 2021, denying an employee's request to be represented by the Union during an interview that the employee had reasonable cause to believe would result in

[1] The parties and I also convened for trial on March 11, 2022. During that session, the General Counsel presented a rebuttal case and I closed the trial record after setting a schedule for posttrial briefs. On March 21, 2022, the court reporting service contacted me and counsel for all parties to advise that it could not transcribe the March 11 proceedings because of a technical problem with the main and backup recordings. Accordingly, the parties and I reopened the record on March 29, 2022, re-did the General Counsel's rebuttal case and all related proceedings, and then re-closed the trial record.

[2] All dates are in 2021, unless otherwise indicated.

disciplinary action against her, and conducting the interview after denying the employee's request. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record,[3] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT[4]

I. JURISDICTION

Respondent, a corporation with an office and place of business in Carr. 164, Km. 6.9, Naranjito, Puerto Rico, provides dialysis treatment services. In the 12 months before the complaint was filed, Respondent derived gross revenues in excess of $250,000 and purchased and received goods at its facility in Naranjito, Puerto Rico that are valued in excess of $50,000 and came directly from points outside the Commonwealth of Puerto Rico. Respondent admits, and I find, that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. Respondent's business operations and schedule

At Respondent's dialysis treatment facility, the four nurses working on the first shift generally arrive at 6 a.m. After arriving, each nurse sets up their dialysis machine and then spends approximately 25–30 minutes going through a set of procedures (e.g., hand washing, disinfecting, checking the patient's vital signs, establishing vascular access, verifying the doctor's orders, and entering data into the computer) before starting their first patient's dialysis treatment at 6:30 a.m. Once the nurse starts their first patient's treatment, the nurse will repeat the process with three more patients, generally at 7 a.m., 7:30 a.m., and 8 a.m.. Each patient's

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[3] The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcripts: p. 7, l. 16: "obverse" should be "observe"; p. 15, l. 8: "Vilagos (ph.)" should be "Villalobos"; p. 15, l. 13: the judge was the speaker; p. 82, l. 8: "concerned" should be "concerted"; p. 107, l. 7: "chemo dialysis" should be "hemodialysis"; pp. 172-276 (throughout): "Hearing Officer" should be "Judge"; p. 175, l. 5: "he" should be "you"; p. 200, l. 23: "no" should be "not"; p. 224, l. 22: "15" should be "50"; p. 239, l. 16: "Figuero" should be "Figueroa"; p. 277: hearing date of "June 29, 2022" should be "March 29, 2022"; and p. 294, l. 21: "lead" should be "load".

[4] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

Many of the exhibits in the record have an original Spanish version and an accompanying English translation marked, for example, as part "a" and "b" of the same exhibit number (see, e.g., GC Exh. 2(a) and 2(b).) For ease of reference, I simply refer to the exhibit number and omit the subpart reference unless the subpart is relevant (e.g., I cite to GC Exh. 2 instead of GC Exh. 2(b)).

dialysis treatment is scheduled to last between 3 and 4.5 hours. As the first set of patients completes treatment, each nurse on the first shift connects another four patients in intervals between 11 a.m. and 1:45 p.m.. Nurses on the first shift are scheduled to complete their shifts at 2:30 p.m. each day, though it is not uncommon for nurses to work 30 minutes or more of overtime to complete their duties. (Tr. 28–30, 48, 51, 59–60, 62–63, 88–89, 107–110, 119, 137–145; GC Exhs. 4, 11, 15–16, 18, 20, 22; see also Tr. 31, 59 (noting that the second shift is scheduled to run from 2 p.m. to 10:30 p.m..)

Respondent makes an effort to stay on schedule with patients' dialysis treatments, in part to avoid affecting the facility's and the patients' schedules, and in part to avoid medical complications that could arise if a patient does not receive their dialysis treatment in a timely manner. Occasionally, however, delays arise that affect the start times for treatments. For example: a patient may arrive late to the facility due to a problem with their own transportation or transportation provided by a third party; the dialysis machine may take additional time to function correctly; the nurse may encounter difficulty with establishing vascular access for the patient's treatment (which could require additional medication); or the facility could experience a temporary power outage. When a shift is running behind schedule, Respondent usually addresses the issue by temporarily having a supervisor or another nurse assist with starting dialysis treatments. (Tr. 64, 74–75, 119–120, 128–130, 145–146, 173–174, 264–265; see also Tr. 129 (explaining that the nurse brought in to assist with treatments would be reassigned for a period of time from other auxiliary duties in the facility).)

2. Facility temperature and humidity

Respondent maintains the temperature in the treatment area between 68 and 76 degrees (Fahrenheit), though on most days the temperature in that area is between 68 and 71 degrees. Similarly, Respondent generally maintains the humidity level in the treatment area between 30 and 60 percent, though on most days the humidity level is between 50 and 60 percent. (R. Exhs. I, O;[5] Tr. 148; see also Tr. 239–240 (noting that Respondent records the temperature and humidity each day at around noon to 1 p.m.).)[6]

3. Workplace policies

In its "Behavior in the Workplace" policy, Respondent states that employees are expected to: treat others with dignity and respect; act in an ethical manner; support the mission and core values of the company; support efforts to ensure a safe and health work environment; resolve work-related issues and concerns in a professional manner through established business processes; and comply with company and departmental policies and procedures. (R. Exh. C.)

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[5] The treatment area in Respondent's facility is located in the west side of the unit. (Tr. 232; see also R. Exhs. I, O (including temperature readings for the west side of the unit).)

[6] At some point in 2020, Respondent's air conditioning unit stopped working in the middle of a shift (while patients were receiving dialysis treatment). Respondent addressed this issue over the next several weeks by using portable air conditioning units. (Tr. 82–84, 123, 164.) The evidentiary record does not show how long it took Respondent to get portable air conditioning units in place in 2020, or precisely how the temperature and humidity were affected while there was no air conditioning available, but in any event, those details are not material to my analysis of what happened on July 29, 2021 (the date of the air conditioning outage at issue here).

Consistent with those expectations, Respondent's "Code of Ethics & Business Conduct" encourages employees to communicate with their supervisor if they (the employees) have doubts about whether a proposed action or business practice is appropriate. (R. Exh. B, pp. 28–31.)

When the need for corrective action arises, Respondent generally follows a progressive discipline framework that begins with the least severe step necessary to correct or change the deficient performance, misconduct, or policy violation. The levels of corrective action are: (1) documented counseling; (2) written warning; (3) final written warning; (4) disciplinary suspension; and (4) termination of employment. Respondent may skip steps in the disciplinary process as warranted based on the circumstances. (R. Exh. D; see also Tr. 208, 266–268.)

4. Union representation

Since at least July 3, 2019, the Union has served as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

> All the male and female hemodialysis graduate nurses that Respondent employs at the clinic which is presently known as Fresenius Kidney Care Naranjito, and excluding all other employees including all administrative personnel, clerical office employees, contract employees, head nurses, service and maintenance employees, and guards and supervisors as defined by law.

(R. Exh. A (Arts. 3, 30).) Respondent has recognized the Union as the exclusive collective-bargaining representative of the bargaining unit, including in a collective-bargaining agreement effective from July 3, 2019, to July 2, 2023. (R. Exh. A (Art. 30).) Nurse Vincent Catala was serving as the only union delegate for the bargaining unit in July and August 2021. (Tr. 43, 62.)

In the collective-bargaining agreement, the Union and Respondent agreed that "the Union, its members, officers, or representatives, will not declare or sanction, nor endorse partial or total strikes of any kind. In addition, they will not establish, sanction, or support reductions in work rhythm, slow-downs or sympathy pickets." Respondent may discipline any employee who violates those provisions. (R. Exh. A (Art. 27).)

B. July 29, 2021: Morning Dialysis Treatments Delayed

1. Respondent learns that air conditioning not working in the treatment area of the facility

At about 5:30 a.m. on July 29, nursing supervisor Jessica Amezquita arrived at Respondent's facility and found that the air conditioning was not working in the treatment area. Housekeeper Julio Figueroa, who was already present at the facility, advised that he had notified his supervisor about the problem and that technicians would arrive as soon as possible. Figueroa and Amezquita did not observe that the floors or walls in the treatment area were wet from humidity, but at Amezquita's direction Figueroa brought in blowers to keep the floors dry and placed "wet floor" signs in the treatment area. (Tr. 78, 128–129, 146–148, 152, 177, 230–231, 233; GC Exhs. 13–14.)

2. Respondent instructs nurses to begin dialysis treatments but the nurses ask Respondent to reconsider

Amezquita texted clinical manager Glorimar Morales to notify her about the air conditioning problem. In response, Morales called Amezquita and stated that the nursing staff nonetheless should begin connecting patients to dialysis machines. At around 6:02 a.m., Amezquita directed nurses Anabel Cruz, Gloria Diaz, and Mildred Espinell to begin connecting patients and noted that Respondent had called technicians about the air conditioning. The temperature in the treatment area was 73 degrees at the time. Cruz and Espinell expressed some concern about working in what they expected would be hot temperatures with their medical conditions (asthma and a respiratory condition, respectively) but planned to work despite those concerns. (Tr. 110–111, 120–121, 147–149, 174–175, 186–187, 231; GC Exh. 12, 13.)

Nurse Vincent Catala arrived at the facility at 6:04 a.m. Amezquita, who was speaking with patients in the waiting room, screened Catala for Covid–19 symptoms and then asked him to wait in the treatment area until she was available to give him instructions. Next, Catala entered the treatment area where he found Cruz and Diaz setting up dialysis machines and learned that the air conditioning was not working. When Amezquita entered the treatment area, she told the nurses that Figueroa was working on the air conditioning and that the nurses should proceed with connecting patients to their dialysis treatments. Catala, acting as spokesperson for himself, Cruz, Diaz, and Espinell, asserted that the conditions in the treatment area were not suitable for starting dialysis treatments because patients/employees could slip and fall if the floors became wet from humidity and because it would be hard for employees to work in hot conditions while wearing the plastic robes, face shields, and masks used as precautions due to the Covid–19 pandemic.[7] Amezquita replied that she had already received instructions to begin dialysis treatments, prompting the nurses to request that Amezquita speak with Morales again about the issue since Morales was the clinical manager. (Tr. 64–67, 75–78, 87, 111–112, 121, 125–126, 128, 131–132, 150–151, 175, 181; GC Exh. 13.)

At around 6:09 a.m., Amezquita spoke to Morales by telephone to provide an update on the status of starting dialysis treatments. After that discussion, Morales devoted around 12–15 minutes to calling and/or emailing three of Respondent's officials to notify them about the problem with the air conditioning and confirm that they agreed with the plan to continue operations at the facility and start dialysis treatments. (GC Exhs. 12–13; see also Tr. 290.) Meanwhile, although the first round of patients had been seated in treatment chairs, the nurses held off on starting the patients' dialysis treatments and instead remained in the back portion of the treatment area. During that time, the nurses: sporadically worked on side duties such as preparing supplies to be used during dialysis treatments; took a few steps to continue setting up the dialysis machines; and otherwise waited for additional instructions.[8] (Tr. 67–68, 79, 150–

[7] Catala suggested that Respondent reschedule the morning patients or arrange to transfer them to another dialysis treatment facility. Respondent, however, did not view these suggestions as viable solutions, and noted that technicians were already coming to work on the air conditioning at the facility. (Tr. 151–152; GC Exh. 13; see also Tr. 162–163, 194–195 (noting that patient transfers would involve logistical challenges that could take at least 24 hours to address, such as finding other facilities with available spaces, and arranging transportation for patients to those facilities).)

[8] The evidentiary record is not clear on whether there was enough work (without connecting patients to dialysis machines) to keep the nurses busy for the entire time that they were waiting to hear back from

153, 155–156, 179–180, 285–286, 288–289, 295; GC Exh. 13; see also Tr. 81 (noting that Catala also called a union representative in this timeframe).)

Morales and Amezquita spoke again by telephone at approximately 6:25 a.m.. Amezquita reported that the treatment area did not feel hot or humid, and advised that the nurses still had not begun connecting patients to the dialysis machines. Shortly after the call, Amezquita advised the nurses that, per Morales' instructions, they should start the scheduled dialysis treatments and should continue wearing the plastic robes (or remove them at their own risk). The nurses expressed concern that the temperature in the treatment area would get hotter once the dialysis machines started. Amezquita responded that technicians were coming to work on the air conditioner, and noted that the facility was behind schedule because it was nearly the scheduled time to begin connecting the second round of patients and the first round was not yet connected. (Tr. 68–69, 91–92, 112–113, 117, 121–122, 152–156; GC Exhs. 12–13; see also GC Exh. 11 (indicating that the first round of patients was scheduled to begin treatment at 6:30 a.m., and the second round was to begin treatment at 7 a.m.).)

3. Nurses begin connecting patients to dialysis machines

At about 6:45 a.m., Amezquita spoke to Morales and obtained approval to have another nurse (Bianca Rosado) pause her work on a patient weight program and assist Amezquita with starting the first round of dialysis treatments. When Amezquita returned to the treatment area with Rosado at 6:46 a.m., she found that Catala, Cruz, Diaz and Espinell were already setting up their dialysis machines to begin connecting the first group of patients.[9] The temperature in the treatment area was 73.5 degrees at the time. In an effort to get back on schedule, Amezquita and Rosado assisted with dialysis treatments until shortly after 8 a.m. The first round of dialysis treatments was delayed between approximately 20 and 50 minutes.[10] (Tr. 46, 80, 85–86, 102,

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Amezquita/Morales. Catala and Espinell were credible when they testified about the work that they performed in this time frame, but Amezquita was equally credible when she testified that she observed the nurses simply waiting (and not working) in the rear part of the treatment area but admitted that she could not see the nurses at all times. Since the General Counsel bears the burden of proof, I have given the benefit of the doubt on this point to Respondent and have found that while the nurses did side work and setup work, that work not constant while the nurses waited for a response to their concerns about working conditions.

[9] In response to a question during cross examination, Amezquita changed her testimony slightly to assert that the nurses began heading over to begin working with their patients when Amezquita returned to the treatment area at 6:45 a.m. with Rosado. (Tr. 176.) I have credited Amezquita's initial testimony (that the nurses were already preparing to connect patients to dialysis treatment when Amezquita and Rosado came to the treatment area, see Tr. 158) because it is an admission that Amezquita made in response to questions from Respondent's counsel during direct examination.

In this same timeframe, Amezquita told Espinell that she (Espinell) could go home because of the heat in the treatment area and Espinell's medical condition. Espinell declined the offer because she felt like she could work under the current conditions in the treatment area and was also out of sick leave. (Tr. 116, 157–158, 292; GC Exhs. 5, 13. To the extent that Amezquita's interview minutes indicate that this conversation occurred at around 6:25 a.m. (see GC Exh. 13), I do not credit that detail because both Amezquita and Espinell testified that the conversation occurred when Espinell was in the process of connecting her first patient and when Rosado had been brought to the treatment area. (Tr. 116, 157–158, 292.)

[10] The evidentiary record is not clear on exactly how long the first round of patients was delayed in

125–126, 156–158, 176, 195–196, 224, 249–250; see also Tr. 88, 129, 174 (noting that Amezquita and Rosado have assisted with dialysis treatments on other occasions when a shift was behind schedule).

At around 8:10 a.m., technicians were able to repair and turn on the air conditioning for the treatment area. (Tr. 159, 205; GC Exhs. 13–14; see also R. Exh. O (indicating that at mid-day the temperature in the treatment area was 71 degrees).) Catala, Cruz, Diaz, and Espinell each finished their shifts, including working 15–45 minutes of overtime with Respondent's approval. (Tr. 18–19, 22–27, 93–95; GC Exhs. 3–4, 6–8, 15–16; see also Tr. 70–71 (noting that Catala worked 30 minutes of overtime on July 29 because, as union delegate, he attended Diaz' disciplinary action meeting for 36 minutes at the end of his day).)

C. July 29 – August 2, 2021: Respondent Disciplines Catala, Cruz, Diaz, and Espinell for their Conduct on July 29

1. Respondent's rationale for imposing discipline

Later on July 29, after managers conferred, Respondent decided to discipline Catala, Cruz, Diaz, and Espinell for violating Respondent's "Behavior in the Workplace" policy and portions of Respondent's code of ethics that relate to the commitment to provide safe and excellent care to patients.[11] (Tr. 205–206, 254–257, 262–266; GC Exhs. 2, 5, 9–10; R. Exhs. B (Code of Ethics & Business Conduct), C (Behavior in the Workplace policy); see also Tr. 209–210 (Morales asserting that Respondent disciplined the nurses because of the delay in connecting patients to their dialysis treatments), 257 (senior human resources manager Leslie Velez asserting that Respondent disciplined the nurses for insubordination, not following policies and procedures, and affecting the quality of service to patients).) Respondent provided the following rationale for taking disciplinary action:

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starting their treatments. Morales estimated the delays as being as short as 20 minutes and as long as 50 minutes. I have credited that estimate because it is generally consistent with other evidence in the record. (Tr. 195–196, 224; GC Exhs. 2, 5, 9–10 (corrective action forms asserting that the nurses did not begin treating patients until between 7:09 and 7:13 a.m., which would indicate delays of 39–43 minutes), 11 (schedule indicating that the first round of patients should have begun treatments at 6:30 a.m.); see also Tr. 46, 287 (Catala estimated that the first round of patients was delayed 35–50 minutes), 126, 290 (Espinell estimated that the first round of patients was delayed 30–45 minutes).

[11] Respondent referenced the following portions of its code of conduct in connection with the disciplinary decisions at issue here: (1) Our Business: We are committed to providing superior clinical care to patients; (2) Patient Care: We strive to provide excellent and sustainable care to our patients; (3) Quality and Innovation: Treating patient safety as a priority. Always providing quality services and products. Acting according to our scientific and ethical standards; (4) Our Behavior: We are committed to conducting business with honesty, integrity, and transparency. Promoting a culture of honesty, transparency, and integrity is vital to maintaining the trust of patients; (5) Our Compliance: Everyone at Fresenius Medical Care is responsible for compliance. We all "own" compliance; and (6) Our Expectations and Your Responsibilities: Fresenius Medical Care expects all employees to perform their duties in accordance with the Company's purpose, global values, policy, this Code, and the law. Live our global values every day by being collaborative, proactive, reliable, and excellent. (GC Exh. 5 (p. 1) (citing R. Exh. B, pp. 8–9, 11, 27, 30); see also GC Exhs. 9–10 (same).)

> This morning at 5:54 a.m., the facility experienced issues with the air conditioning system even though it was within set parameters. The temperature was 73 degrees (F). [Morales] was notified of the incident at said time, instructions were given to continue working and the patient connection, that calls will be made to check on the air conditioners. The supervisor on duty, J. Amezquita, told [Morales] that [nurses] stayed in the back of the treatment unit despite the fact that instructions were given to continue with clinical operations at the patient connection. After this, you did not work for a span of an hour and 9 mins, which was the connection of your first patient.
>
> The collective bargaining agreement refers to Article 11, Management Rights . . . where it provides that the company has the absolute right to manage its business, direct its operations and including the right to plan, direct, and control operations. The union recognizes the company's right to hire, promote, transfer, discipline or terminate any employee covered by this collective bargaining agreement. Section C [of Article 11] provides that the company may establish rules to preserve and encourage order and efficiency from personnel whose rules must be complied with by the employees of this collective bargaining agreement. Conversely, Article 27, Strikes and Lockouts . . . says that the union shall not support slowdowns, sit-ins, nor sympathy pickets. The union shall neither intervene nor allow union employees to intervene in acts that hinder company activities.

(GC Exh. 10 (Diaz corrective action form); see also GC Exhs. 2 (Catala corrective action form, containing a similar narrative but slightly modifying the length of time that Catala allegedly did not work), 5 (Espinell corrective action form, containing a similar narrative but slightly modifying the length of time that Espinell allegedly did not work, and quoting Espinell's brief statement about why she was reluctant to connect patients to dialysis treatments), 9 (same, regarding Cruz).

2. Morales' meetings with Catala, Cruz, and Diaz

Citing the rationale noted above, Morales issued written warnings to Diaz and Cruz (on July 29, and August 2, respectively), and issued a 5–day disciplinary suspension to Catala on July 30. There is no dispute that Catala received a suspension instead of a written warning because he had a more extensive record of prior corrective action than the other three nurses. A union delegate or another witness selected by the employee attended each of the meetings between Morales and Catala, Cruz, and Diaz. (Tr. 31–37, 70–71, 209, 211, 216–218, 222, 268; GC Exhs. 2, 9–10; Jt. Exh. 1 (pars. 5–6); see also Tr. 70 (noting that Catala declined Morales' request to meet on July 29 about disciplinary action that he would receive because he did not have a union representative present to join him in such a meeting).)

3. Morales' meeting with Espinell

On about July 30, Morales advised Espinell to attend a meeting about what happened on July 29. When Espinell stated that she wished to have a union representative attend the meeting, Morales asserted that there was no need to have such a representative attend the meeting because the meeting was not part of an investigation. At Morales' direction, Espinell asked a coworker (employee N.R.P.) to attend the meeting as Espinell's witness. In the meeting, Morales walked

Espinell through the content of the written warning that she (Morales) had already prepared. Citing the same disciplinary rationale used for Catala, Cruz, and Diaz, Morales issued a written warning to Espinell. Espinell did not sign the corrective action form because she did not agree with the disciplinary decision.[12] (Tr. 32, 42–43, 113–116, 126–127, 208, 210, 225–226, 272; GC Exh. 5 (noting that an employee signature on the corrective action form indicates receipt of the form, and that employees have the right to submit a written statement if they disagree with the information on the corrective action form and wish to explain their position).)

DISCUSSION AND ANALYSIS

A. Credibility Findings

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB 848, 860 (2014) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). To the extent that credibility issues arose in this case, I have stated my credibility findings in the Findings of Fact above.

B. Did Respondent Violate the Act by Disciplining Employees Because They Engaged in Union and/or Protected Concerted Activities?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(3) and (1) of the Act by, between July 29 and August 2, 2021, issuing written warnings to Anabel Cruz, Gloria Diaz,

[12] Espinell testified that Morales asked her what happened on July 29, and also asked why Espinell did not go home when given the opportunity to do that due to her medical condition. (Tr. 115.) Morales denies asking Espinell any investigatory questions, asserting instead that she only spoke to Espinell about the disciplinary action. (Tr. 210–211, 225–226.) I credit Morales on this point. By the time Espinell met with Morales on July 30, Respondent had already investigated the events of July 29 and issued a written warning to Diaz. It stands to reason that Espinell (and Catala and Cruz) would also receive corrective action, and that Morales would not have any need to ask questions about the underlying events since the investigation had already been completed. Consistent with those facts, Espinell concedes that Morales had already prepared Espinell's corrective action form before the meeting. (See Tr. 126–127.)

In connection with these findings, I note that I decline the General Counsel's request that I draw an adverse inference from Respondent's failure to call manager Suheily Pabon to testify about the July 30 meeting with Espinell (Pabon attended the July 30 meeting). (See GC Posttrial Br. at 20; GC Exh. 5.) I do not find, in my discretion, that an adverse inference is appropriate here, particularly where the parties presented sufficient evidence to develop the evidentiary record through the testimony and documentation that I have cited herein (including Espinell's admission that Morales had already prepared the corrective action form). See *Jam Productions, Ltd.*, 371 NLRB No. 26, slip op. at 16 fn. 53 (2021) (noting that the decision to draw an adverse inference lies within the discretion of the factfinder).

and Mildred Espinell, and suspending Vincent Catala, because they concertedly complained about wages, hours, and working conditions at Respondent's facility (specifically the heat and malfunctioning air conditioning in their work area).

2. Applicable legal standard

Section 7 of the Act provides, among other things, that employees have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection. Concerted activity to express concern about working conditions falls squarely within the Act's protection, unless the concerted activity is unlawful, violent, in breach of contract, or otherwise indefensible because it shows a disloyalty to the workers' employer that is unnecessary to carry on the workers' legitimate concerted activities. *NLRB v. Washington Aluminum Co.*, 370 US 9, 17 (1962); *Ohio Bell Telephone Co.*, 370 NLRB No. 29, slip op. at 2 (2020).

3. Analysis

The evidentiary record establishes that in the morning on July 29, 2021, Respondent discovered that the air conditioning was not working in the treatment area of Respondent's facility. Shortly before 6:09 a.m., Respondent advised nurses Vincent Catala, Anabel Cruz, Gloria Diaz, and Mildred Espinell that they should nonetheless begin connecting patients to dialysis treatment machines because technicians would be coming to work on the air conditioning unit. Catala, a union delegate speaking on behalf of himself, Cruz, Diaz, and Espinell, asked Respondent to reconsider that decision, expressing concerns that the conditions in the treatment area were not suitable for starting dialysis treatments because patients/employees could slip and fall if the floors became wet from humidity and because it would be hard for employees to work in hot conditions while wearing protective equipment due to the Covid–19 pandemic. Shortly after 6:25 a.m., Respondent reiterated its instruction to begin connecting patients to dialysis machines. After a few minutes, Catala, Cruz, Diaz, and Espinell (who had been handling other duties sporadically and waiting for a response to their inquiry) began connecting patients as instructed. Ultimately, the first round of dialysis treatments was delayed 20–50 minutes (i.e., patients who were scheduled to start treatment at 6:30 a.m. did not begin treatment until between 6:50 and 7:20 a.m.). Respondent subsequently disciplined Catala, Cruz, Diaz, and Espinell, asserting that their delay in starting dialysis treatments violated Respondent's "Behavior in the Workplace" policy and portions of Respondent's code of ethics that relate to the commitment to provide safe and excellent care to patients. (Findings of Fact (FOF), Section II(B)–(C).)

In a case where an employer disciplines or discharges an employee for conduct that is protected concerted activity, it is unnecessary to analyze the employer's motive for the discipline/discharge. I find that this is such a case, insofar as the record is clear that Respondent disciplined the four nurses because they engaged in protected concerted and union activities[13]

[13] The protected concerted activities in this case include union activities, as Catala was the union delegate for the bargaining unit and served as the spokesperson for himself, Cruz, Diaz, and Espinell during the dispute with Respondent about working conditions on July 29. (FOF, Sec. A(4), B(2).) For brevity, however, I generally use the term "protected concerted activities" to refer to the nurses' activities on July 29.

(asking Respondent to reconsider its plan to proceed with dialysis treatments when the air conditioning was not working) that resulted in delays to patient dialysis treatments. Indeed, the nurses' protected activities and the resulting delay to starting patient dialysis treatments cannot be separated from each other. The nurses believed that it was unsafe to begin dialysis treatments and accordingly held off on starting the treatments (and worked on other duties) while they waited for Respondent to reconsider its plan of action. In short, the treatment delays were a natural result of the nurses exercising their Section 7 rights. See, e.g., *Washington Aluminum Co.*, 370 US at 11–12 (noting that workers who engaged in protected activities by protesting extreme cold working conditions in the shop were discussing their options when the 7:30 a.m. starting buzzer sounded). The *Wright Line* framework therefore does not apply, as that framework is only appropriate in cases that turn on the employer's motive.[14] *Ohio Bell Telephone Co.*, 370 NLRB No. 29, slip op. at 4–5 and fn. 26; *Matsu Corp. d/b/a Matsu Sushi Restaurant*, 368 NLRB No. 16, slip op. at 1 fn. 2 (2019), enfd. 819 Fed. Appx. 56 (2d Cir. 2020); *Atlantic Scaffolding Co.*, 356 NLRB 835, 838 (2011); *CGLM, Inc.*, 350 NLRB 974, 974 fn. 1 (2007), enfd. 280 Fed. Appx. 366 (5th Cir. 2008).

As noted above, concerted activities to express concern about working conditions fall squarely within the Act's protection, unless the concerted activity is unlawful, violent, in breach of contract, or otherwise indefensible. Working from that foundation, Respondent offers three primary defenses. First, Respondent maintains that the nurses' activities were not protected because the nurses engaged in a work slowdown that was prohibited by the collective-bargaining agreement (Art. 27).[15] (R. Posttrial Br. at 13–14, 17, 22–26; see also FOF, Sec. II(A)(4) (discussing Art. 27).) The Board has explained that unprotected work slowdowns involve concerted attempts by employees to interfere with efficient production while remaining on the job. *Ohio Bell Telephone Co.*, 370 NLRB No. 29, slip op. at 3 and fn. 16 (discussing three

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[14] I would still find that Respondent unlawfully disciplined Catala, Cruz, Diaz, and Espinell under *Wright Line*. See *General Motors LLC*, 369 NLRB No. 127, slip op. at 2 (2020) (describing the *Wright Line* framework). First, the General Counsel made an initial showing of discrimination (i.e., the General Counsel demonstrated that the nurses engaged in union and protected concerted activities on July 29, 2021, Respondent knew about the activities, and Respondent had animus against the activities, as demonstrated by the fact that Respondent cited the July 29 disagreement about starting dialysis treatments when the air conditioning was not working as the basis for disciplining the nurses). Second, Respondent did not prove, as an affirmative defense, that it would have disciplined the nurses even in the absence of their protected concerted activities. As noted above, the treatment delays that Respondent cited as the basis for discipline were incidental to the nurses' protected concerted activities. Respondent therefore cannot maintain that it would have disciplined the nurses even in the absence of their protected concerted activities. Accordingly, Respondent's affirmative defense fails, leading to a conclusion that the General Counsel demonstrated under the *Wright Line* framework that Respondent violated the Act when it disciplined the nurses.

As one final point regarding *Wright Line*, I note that the General Counsel asserted that the Board should overrule its decision in *General Motors*. (GC Posttrial Br. at 33.) I do not address that argument here because that argument should be presented to the Board.

[15] Respondent also asserts that the nurses' conduct violated Article 6(E) of the collective-bargaining agreement (see R. Posttrial Br. at 14). Article 6(E) states that "Complaints or grievances nor matters related to [the CBA] or the terms and conditions of employment will be discussed in front of patients or visitors or in patient service areas." (R. Exh. A, pp. 8–9.) I decline to consider that theory as a defense because it was not part of Respondent's rationale for disciplining the nurses (see FOF, Sec. II(C)(1)) and, as such, was not litigated as a disciplinary theory during the trial.

example cases in which the Board found unprotected work slowdowns). On the other hand, the Board has explained that concerted activities may have an incidental impact on production and that such impact does not, in itself, remove employees from the protection of the Act. Id., slip op. at 3 (citing *Johnnie Johnson Tire Co.*, 271 NLRB 293, 294–295 (1984), affd. 767 F.2d 916 (5th Cir. 1985).)

Respondent's work slowdown argument fails because the evidentiary record does not establish that the nurses had a strategy to slow down work or interfere with efficient production as a form of protest. To the contrary, the nurses did as much work as they could while they waited for Respondent to consider their concerns about starting dialysis treatments when air conditioning was not working in the treatment area. Once Respondent confirmed that dialysis treatments should begin, the nurses proceeded with their duties in full. (FOF, Section II(B).) Under those circumstances, I find that the nurses' conversations amongst themselves and with Respondent about the working conditions on July 29 were protected under the Act, notwithstanding the incidental delays to dialysis treatments that occurred while the dispute was being resolved.[16]

Second, Respondent maintains that the nurses engaged in an unprotected partial strike that is also prohibited by Art. 27 of the collective-bargaining agreement. (R. Posttrial Br. at 13–14, 17, 22–26.) An unprotected partial strike occurs when employees refuse to perform some of their duties while remaining on the job and continuing to perform other duties. Such a partial work stoppage is indefensible because it constitutes an attempt by employees to set their own terms and conditions of employment while remaining on the job. See *Ohio Bell Telephone Co.*, 370 NLRB No. 29, slip op. at 3–4. The Board has found, however, "that an employer faced with employees who refuse to perform a required job duty may lawfully require them to leave the premises; only when employees refuse *either* to work as directed *or* to depart does their conduct cross the line from protected to unprotected." Id. at 4 (emphasis in original). Respondent never gave such a work-or-leave directive to the nurses here.[17] Thus, the nurses' efforts to present their concerns about starting dialysis treatments without air conditioning never crossed the line from protected to unprotected, and Respondent's partial strike argument fails.

Third, Respondent asserts that the nurses' conduct on July 29 was "indefensible" and therefore unprotected. (R. Posttrial Br. at 26–27.) Respondent correctly observes that the "Board has held concerted activity indefensible where employees fail to take reasonable precautions to protect the employer's plant, equipment, or products from foreseeable imminent danger due to sudden cessation of work." *Bethany Medical Center*, 328 NLRB 1094, 1094 (1999). That theory does not apply here, however, because the nurses did not walk out, go on strike, or otherwise cease work. Instead, the nurses remained at work and thus were available to

[16] As an aside, I note that Respondent's Code of Ethics & Business Conduct encourages employees to speak up when they have concerns about whether a business decision or action is appropriate. (See FOF, Section II(A)(3).) The nurses arguably acted in a manner fully consistent with that policy when they questioned whether it was appropriate to proceed with dialysis treatments without air conditioning in the morning on July 29.

[17] Respondent's offer to allow Espinell to go home due to her medical condition was not a directive. Respondent merely presented Espinell with an option to leave, which Espinell declined. (FOF, Sec. II(B)(3).)

respond to any emergencies that may have arisen.[18] But even if we put the lack of a work stoppage aside, I find that the treatment delays that occurred during the labor dispute here did not foreseeably create such a risk of harm to patients that would warrant depriving the nurses of the protection of the Act. Delays in dialysis treatments were not uncommon as a general matter and could result from a variety of circumstances, including but not limited to the patient arriving late, equipment malfunctioning, difficulty with establishing the patient's vascular access, or a temporary power outage. Respondent usually addressed these delays by assigning additional nurses to the treatment area to assist with connecting patients in an effort to get back on schedule. (FOF, Sec. II(A)(1).) That maneuver was available to Respondent on July 29, and indeed Respondent did use two additional nurses assist with getting back on schedule when treatment delays arose while nurses sought redress for their concerns about the working conditions. Accordingly, I do not find that the nurses' conduct on July 29 was indefensible/unprotected. See *Bethany Medical Center*, 328 NLRB at 1094–1095 (rejecting a hospital's argument that catheterization laboratory employees engaged in indefensible conduct when they walked off their jobs for 2 hours to protest terms and conditions of employment, noting that it was feasible for the hospital to delay medical procedures or direct patients to other nearby hospitals).

Since the nurses' activities on July 29 were protected by the Act, it was unlawful for Respondent to take disciplinary action against them. Accordingly, I find that Respondent violated Section 8(a)(3) and (1) of the Act when it disciplined Catala, Cruz, Diaz, and Espinell for engaging in union and protected concerted activities on July 29, 2021.

C. Did Respondent Violate the Act by Interviewing Espinell on August 2, 2021, after Denying Espinell's Request to be Represented by the Union During the Interview?

1. Complaint allegations

The General Counsel alleges that Respondent violated Section 8(a)(1) of the Act by, on or about August 2, 2021, denying employee Mildred Espinell's request to be represented by the Union during an interview that Espinell had reasonable cause to believe would result in disciplinary action against her, and conducting the interview even though Respondent had denied Espinell's request for union representation.

2. Applicable legal standard

Under *NLRB v. J. Weingarten, Inc.*, 420 US 251 (1975) (*Weingarten*), an employer violates Section 8(a)(1) of the Act when it denies an employee's request to have a union representative present at an investigatory interview that the employee reasonably believes might result in disciplinary action. While *Weingarten* rights do not apply where the sole purpose of a meeting is the imposition of predetermined discipline, if the employer goes beyond merely informing the employee of a previously made disciplinary decision, the full panoply of

[18] Since the nurses did not go on strike or refuse to work, Respondent misses the mark with its suggestion that the Union should have provided Respondent with a notice of an intent to strike/picket under Section 8(g) of the Act. (See R. Posttrial Br. at 27–28.) I also note that it is well established that the special strike notice requirements of Section 8(g) of the Act apply only to labor organizations, not to employees. *Bethany Medical Center*, 328 NLRB at 1094.

protections under *Weingarten* may be applicable. Thus, for example, were the employer to inform the employee of a disciplinary action and then seek facts or evidence in support of that action, or attempt to have the employee admit his/her alleged wrongdoing or sign a statement to that effect, then the employee's right to union representation would attach. On the other hand, if, after the disciplinary action is communicated, the employer and employee engage in a conversation at the employee's behest about the reasons for the previously determined discipline, that will not, alone, convert the meeting to an investigatory interview at which *Weingarten* protections apply. *PAE Aviation and Technical Services, LLC*, 366 NLRB No. 95, slip op. at 2 (2018); *Baton Rouge Water Works Co.*, 246 NLRB 995, 997 (1979).

3. Analysis

The evidentiary record establishes that in the afternoon on July 29, 2021, Respondent's managers conferred and decided that Catala, Cruz, Diaz, and Espinell should each be disciplined for their conduct that morning. Consistent with that decision, Morales issued a written warning to Diaz on July 29.[19] (FOF, Section II(C)(1)–(2).)

On July 30, Morales asked Espinell to attend a meeting about the events of July 29. When Espinell responded that she would like to have a union representative attend the meeting, Morales stated that it would not be necessary to have a union representative present because the meeting was not part of an investigation. Espinell accordingly attended the meeting with a coworker present as a witness. At the meeting, Morales walked Espinell through the content of the corrective action form that Morales prepared before the meeting and issued Espinell a written warning. (FOF, Section II(C)(3).)

The Board has explained that if an employer has reached a decision to impose discipline on an employee based on facts and evidence obtained before the interview, no Section 7 right to union representation exists under *Weingarten* when the employer meets with the employee simply to inform her of, or impose, that previously determined discipline. *Baton Rouge Water Works Co.*, 246 NLRB at 997. As set forth in the findings of fact, that was precisely the situation when Morales declined Espinell's request to have a union representative attend the July 30 meeting at which Morales issued a written warning to Espinell. Indeed, Morales had already prepared the corrective action form before the meeting and explicitly told Espinell that the meeting was not part of an investigation. Espinell therefore did not have a reasonable basis to believe that the meeting would be investigatory in nature.

The General Counsel maintains that Morales engaged in conduct that converted the meeting to an investigatory meeting where *Weingarten* protections apply, but I did not find that

[19] Catala, the union delegate for the bargaining unit, attended Diaz' disciplinary meeting on July 29. Catala also declined to meet with Morales on July 29 about his own discipline because he did not have a union representative present. (FOF, Section II(B)(3), C(2).) It does not follow from those facts, however, that the nurses were entitled to union representation under *Weingarten* at their disciplinary meetings. As to Diaz, Respondent simply permitted her (as it did with the other nurses) to have another employee attend/witness the disciplinary meeting. (See FOF, Sec. II(C)(2).) And as to Catala, I find that Respondent was simply being cautious about not running afoul of *Weingarten* when it allowed Catala to decline the July 29 meeting – there is no evidence that Catala's meeting in fact would have been investigatory in nature.

the General Counsel met its burden of proving that such conduct occurred. (See FOF, Section II(C)(3).) Accordingly, I find that it was permissible under the circumstances for Respondent to decline Espinell's request for a union representative at her disciplinary meeting, and I recommend that the complaint allegation that Respondent violated Espinell's rights under *Weingarten* be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By, on about July 29 through August 2, 2021, disciplining Vincent Catala, Anabel Cruz, Gloria Diaz, and Mildred Espinell because they engaged in union and protected concerted activities, Respondent violated Section 8(a)(3) and (1) of the Act.

4. The unfair labor practices stated in conclusion of law 3, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Regarding Respondent's violation of Section 8(a)(3) and (1) of the Act through its disciplinary 5–day suspension of Vincent Catala, I shall require Respondent to make him whole for any loss of earnings and other benefits. The make whole remedy shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center,* 356 NLRB 6 (2010). To the extent that Vincent Catala searched for work during his suspension, in accordance with *King Soopers, Inc.*, 364 NLRB 1153 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate Catala for his search-for-work and interim employment expenses regardless of whether those expenses exceed his interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

I shall also require Respondent to expunge from its files any references to its unlawful decisions to discipline Vincent Catala, Anabel Cruz, Gloria Diaz, and Mildred Espinell, and within 3 days thereafter notify them that this has been done and that the unlawful decisions will not be used against them in any way.

In accordance with *Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB 101 (2014), Respondent shall compensate Vincent Catala for the adverse tax consequences, if any, of receiving a lump-sum backpay award. In addition, in accordance with *AdvoServ of New Jersey,*

Inc., 363 NLRB 1324 (2016) and *Cascades Containerboard Packaging–Niagara*, 370 NLRB No. 76 (2021), as modified in 371 NLRB No. 25 (2021), Respondent shall, within 21 days of the date the amount of backpay is fixed either by agreement or Board order (or such additional time as the Regional Director may allow for good cause shown), file with the Regional Director for Region 12: a report allocating backpay to the appropriate calendar year(s); and a copy of Vincent Catala's corresponding W–2 form(s) reflecting the backpay award. The Regional Director will then assume responsibility for transmitting the report and form(s) to the Social Security Administration at the appropriate time and in the appropriate manner.[20]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[21]

ORDER

Respondent, Biomedical Applications of Puerto Rico, Inc., d/b/a Fresenius Kidney Care Naranjito, Carr. 164, Km. 6.9, Naranjito, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Disciplining employees because they engage in union and protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Vincent Catala whole for any loss of earnings or benefits he may have suffered as a result of the discrimination against him, plus daily compounded interest, in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of this Order, remove from its files any references to the unlawful decisions to discipline Vincent Catala, Anabel Cruz, Gloria Diaz, and Mildred

[20] The General Counsel also requested the following additional remedies: (a) that Respondent provide its managers and supervisors with a copy of my decision and/or any decision issued by the Board finding that Respondent violated the Act in this case, and that those managers and supervisors certify in writing that they have reviewed and understand those decisions; and (b) that Respondent send a letter to Catala, Cruz, Diaz, and Espinell apologizing for any hardship or distress that it caused by unlawfully disciplining them and assuring them that Respondent will respect employee Section 7 rights, and post/distribute those letters in the same manner as the notice. (See GC Posttrial Br. at 36.) I decline the General Counsel's request for these additional remedies, as the remedies that I have set forth herein are sufficient to address Respondent's violations of the Act.

[21] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Espinell and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful decisions will not be used against them in any way.

(c) Compensate Vincent Catala for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay awards to the appropriate calendar year(s) and a copy of the corresponding W–2 form(s) reflecting the backpay award.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Carr. 164, Km. 6.9, Naranjito, Puerto Rico, a copy of the attached notice marked "Appendix" in both English and Spanish.[22] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 29, 2021.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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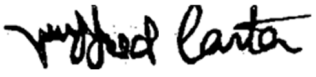
[22] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID–19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if Respondent customarily communicates with its employees by electronic means.

If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. , May 13, 2022.



Geoffrey Carter
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT discipline employees because they engage in union and protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make Vincent Catala whole for any and all loss of earnings and other benefits incurred as a result of our unlawful decision to discipline him.

WE WILL remove from our files any references to our unlawful decisions to discipline Vincent Catala, Anabel Cruz, Gloria Diaz, and Mildred Espinell and, within 3 days thereafter, notify them in writing that this has been done and that the unlawful decisions will not be used against them in any way.

WE WILL compensate Vincent Catala for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 12, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a report allocating the backpay award to the appropriate calendar year(s) and a copy of the corresponding W–2 form(s) reflecting the backpay award.

BIOMEDICAL APPLICATIONS OF PUERTO RICO, INC. d/b/a FRESENIUS KIDNEY CARE NARANJITO

(Employer)

Dated _____ By _____
(Representative) (Title)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-281235 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

South Trust Plaza, 201 East Kennedy Boulevard, Ste 530, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (813) 228-2345.